

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

HANNAH G.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2012080057

DECISION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on September 14, 2012, in Torrance.

Hannah G. (claimant) was present for a portion of the hearing; she was represented by her mother, Sandra G.¹

Gigi Thompson, Manager, Rights Assurance, represented Harbor Regional Center (HRC or Service Agency).

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on September 14, 2012.

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¹ Initials and family titles are used to protect the privacy of claimant and her family.

ISSUE

Whether the Service Agency must pay for five hours of homemaker services provided to claimant by Ligia Liques on March 18, 2012.^{2,3}

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-7, 9-12; claimant's exhibits A-D, H-M.

Testimony: Betty Tanius, Program Manager, HRC; Sandra G., claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 15-year-old girl who is a consumer of HRC based on her qualifying diagnosis of Canavan's disease, a rare degenerative disorder that results in a condition similar to mental retardation due to developmental and neurological delays, as well as physical problems.

2. ALJ Nafarrete made the following findings, adopted herein, in a Decision issued in OAH No. 2010110781 on June 20, 2011, after a hearing involving claimant and HRC:

1. . . . Claimant is blind, unable to move or walk, unable to sit up without help, and cannot feed or care for herself. While she can communicate in some manner, claimant is unable to talk. Claimant requires around-the-clock care from a parent or caregiver for all of her daily living needs. Her parents are now separated. She lives at home with her mother during the week and visits her father during the weekends. . . .

2. Due to her disabilities and developmental delays, claimant has been a client of the Harbor Regional Center for a number of years and currently

² At hearing, claimant amended her request; she had initially sought payment for eight hours of services provided by Ms. Liques while another homemaker service provider, Nancy Mendez, also provided services. According to Sandra G.'s testimony at hearing, Ms. Mendez only worked for five hours on March 18, so the two providers overlapped for only five hours.

³ A second issue raised in claimant's Fair Hearing Request—whether the Service Agency must fund homemaker services for 24 hours, seven days per week, while claimant is in her mother's custody, minus hours that claimant is in school or receiving IHSS services—was precluded from consideration at this hearing because it is the subject of a writ proceeding currently pending in *Hannah G. v. The Office of Administrative Hearings and Harbor Regional Center*, Los Angeles County Superior Court, in Case No. BS138612, filed on August 10, 2012.

receives occupational therapy and 3,614 hours per year, or approximately 301 hours per month, of homemaker services through Cambrian Homecare (Cambrian). Cambrian employs and pays the caregivers who perform various services and supports for claimant at home and in the community as well as assist her mother in caring for claimant. In addition, claimant receives In-Home Supportive Services (IHSS) from Los Angeles County.

3. With the caregiver hours provided by the Service Agency, IHSS hours, and one-to-one school aide hours, claimant's mother has organized and arranged for 24-hour individual care for her daughter at home and at school. The mother has retained one long-standing full-time caregiver, Vivian Mendez, who cares for claimant for approximately 30 to 40 hours per week at home and is also paid to act as a one-to-one aide for claimant at school. For the remaining hours during the week, claimant's mother has retained other caregivers who have worked in her home for different periods of time. For the most part, the caregivers have been paid by Cambrian and another home care agency.

4. Over the years, claimant and the Service Agency have been involved in a number of fair hearings regarding the number of caregiver hours that should be provided to claimant, the salaries and employment benefits that should be given to the caregivers, the difficulties that claimant's mother has had in retaining caregivers, and the requests for other services for claimant and her family. Decisions in these prior cases include, in part, OAH Case Nos. L-2002090357, L-2004040211, and L-2006020675.

5. More recently, in OAH Case No. 2009091685, dated July 29, 2010, the caregiver service for claimant was changed from respite care to homemaker service care due to amendments to the Lanterman Developmental Disabilities Services Act (Lanterman Act) that, in part, limited respite hours to 90 hours per quarter. Moreover, the Service Agency's proposed action to reduce caregiver hours was, in part, upheld. Claimant's caregiver service hours were reduced by 850 hours from 4,465 hours per year to the current 3,614 hours per year based, in large part, upon the 850 hours of care and services provided to claimant during [the] school year by the school district, a generic resource that a regional center is required to take into consideration in providing services under the Lanterman Act. As noted in the Decision, caregiver hours or funding from generic resources had increased for claimant, not only from the school district but also from IHSS, while the Service Agency's obligation to provide caregiver hours and funding had remained the same. At the time of the hearing in that Decision, claimant was receiving 283 hours per month of IHSS.

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6. In early August 2010, the Service Agency informed claimant that the regional center would begin implementing the Decision in Case No. 2009091685 and authorized Cambrian to provide 336 homemakers service hours for August 2010 but did not agree to “a yearly authorization of the total number of hourly services.” On September 29, 2010, the Service Agency prepared a support plan or schedule for the monthly utilization of the 3,614 hours of homemaker services for the next year. The Service Agency’s support plan or schedule allowed for the provision of an average of 301 hours per month of homemaker services and did not include 27 hours for the year that were reserved for claimant to use as an “unplanned support need.” . . .

3. Claimant currently receives services under her Individual Family Service Plan (IFSP) dated August 26 and September 13, 2011, and a prior Decision in OAH Case No. 2009091685 (Ex. M), including 3,614 hours per year, or approximately 301 hours per month, of homemaker services through Cambrian Homecare (Cambrian).⁴ ALJ Nafarrete found, in OAH No. 2010110781, that the Service Agency’s support plan or schedule allowed for the provision of an average of 301 hours per month of homemaker services and did not include 27 hours for the year that were reserved for claimant to use as an “unplanned support need.”

4. On March 25, 2012, claimant’s mother emailed Ed Swan, claimant’s counselor at HRC, to request funding for unforeseen services provided to claimant on Sunday, March 18, 2012. (Ex. 7.) Nancy Mendez, who had been scheduled to work with claimant from 8:00 a.m. to 5:00 p.m. on that date, called claimant’s mother on Saturday, March 17. She informed claimant’s mother that she had had a dental procedure on Friday and was told by her doctor not to perform any lifting duties on Sunday. Claimant’s mother called Ligia Liques, another of claimant’s caregivers, who agreed to work on Sunday along with Ms. Mendez in order to help lift claimant. Ms. Liques worked five hours. Claimant’s mother requested that HRC provide the extra funding to compensate Ms. Liques for the hours she worked on that date.

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⁴ The Lanterman Developmental Disabilities Services Act (Lanterman Act) requires an “individual program plan” or “IPP” for each regional center client. HRC, however, refers to a client’s plan as an “Individual/Family Service Plan” or an “IFSP,” terms that are derived from the federal Early Intervention Program for Infants and Toddlers with Disabilities, which is known in California as the “Early Start Program” and which applies only to infants and toddlers under the age of three. (Cal. Code Regs., tit. 17, § 52100 et seq.) For purposes of this matter, “IFSP” is deemed to be synonymous with “IPP.”

5. By letter from Mr. Swan dated June 28, 2012, the Service Agency denied claimant's mother's request for funding for services provided to claimant on March 18 without prior authorization. Mr. Swan wrote:

All families of children have the burden of arranging for necessary childcare when their primary plan is unexpectedly unavailable, and the potential exists to miss work when no other option exists for caring for their child. HRC respects your decision to go to work on March 16th [sic]. However, it is not the responsibility of HRC to reimburse you for your decision to schedule two (2) paid Cambrian caregivers to work the same shift. Other options available to you . . . include (1) stay at home/work at home; and (2) [claimant's] father was available to provide care and supervision. Mr. [G.] is a natural support and provides [claimant's] care and supervision every weekend and HRC maintains that this support must be exhausted prior to any additional funding be [sic] requested from HRC.

(Ex. 3.)

6. On June 25, 2012, claimant's mother submitted to HRC a Fair Hearing Request on claimant's behalf, appealing the denial of funding for care provided by Ms. Liques on March 18, 2012. This hearing ensued.

7. Betty Tanius, a Program Manager for HRC, testified that she was involved in the process of reviewing claimant's mother's request to fund Ms. Liques's time on March 18. She testified that Sandra G. should have worked from home on March 18 or left claimant in the care of claimant's father, who had custody of claimant until 8:00 a.m. on Sunday. She also testified that the funding request was untimely, in that it was received on March 27, and was the first notice given to the Service Agency that two caregivers had concurrently provided homemaker services to claimant on March 18.⁵

8. Claimant's mother could not, as a practical matter, have informed the Service Agency in advance of the need for additional services on Sunday, March 18. Claimant's mother did not learn that Ms. Mendez's physical activities were restricted by her dentist until claimant's mother was so informed by Ms. Mendez on Saturday, March 17, when the Service Agency was closed. The evidence supports a finding that claimant's mother could not, as a practical matter, work from home on March 18, 2012, and that claimant's mother is not, at this time, required to

⁵ California Code of Regulations (CCR), title 17, section 50612, subdivision (b)(1)(B), allows a request for retroactive authorization for emergency services if a consumer notifies the Service Agency within five working days of the event. Using the date that Sandra G. emailed Mr. Swan, the request for retroactive authorization was made on Sunday, March 25; five business days after the service was provided would have been Friday, March 23.

look to claimant's father as a natural support. Claimant's mother testified as to the duties she performed at work on March 18. She is a hospital nutritionist. On Sundays, her duties include reviewing the hospital census, seeing patients who require her services and patients whom treating physicians wanted educated as to diet prior to discharge, performing any assessments due that day for high risk patients and others, handling issues with tube feeding or parental feeding, providing input into food formulas, handling issues from the kitchen staff, and completing paperwork documenting the work she performed that day. Those duties could not have been performed while working from home. She also testified that she is currently involved in a custody dispute with claimant's father, based on her belief that he is not an appropriate custodian for claimant. Her testimony on these two points was not refuted on this record.⁶

9. Based on claimant's deficits, her intervention history, and the facts of this case, the evidence warrants an exercise of discretion allowing the request, even though it was made on a Sunday, two calendar days after the last business day, a Friday, contemplated under CCR, title 17, section 50612, subdivision (b)(1)(B). (Factual Finding 7, fn. 5.) The tardiness of Sandra G.'s request was not identified as a basis for refusing the request in the Service Agency's June 28 letter denying funding. (Factual Finding 5.) Nor has there been a showing of any prejudice to the Service Agency resulting from the slightly tardy request. This is not to imply, however, that a strict application of statutory and regulatory deadlines would not be appropriate on different facts, or for a future failure to comply with the five-day time limit in CCR, title 17, section 50612, subdivision (b)(1)(B).

LEGAL CONCLUSIONS

1. Cause exists to grant claimant's appeal, as set forth in Factual Findings 1 through 9, and Legal Conclusions 2 through 6. Specifically, and as set forth in the Order, below, the Service Agency is required to fund five hours of homemaking services provided by Ligia Liques to claimant on March 18, 2012, while Ms. Mendez also provided services.

2. The Lanterman Act governs this case. (Welf. & Inst. Code, § 4500 et seq.⁷) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant's mother requested a fair hearing to appeal the denial of funding for five hours of homemaker services on March 18, 2012. Jurisdiction in this case was thus established. (Factual Findings 1-13.)

⁶ The ALJ makes no finding in this Decision as to the merits of claimant's mother's position in her custody dispute; that is a matter for the Superior Court.

⁷ All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

3. The Lanterman Act acknowledges the state's responsibility to provide services and supports for developmentally disabled individuals and their families. (§ 4501.) Regional centers are responsible for developing and implementing IPPs, for taking into account consumer needs and preferences, and for ensuring service cost-effectiveness. (§§ 4646, 4646.5, 4647, and 4648.)

4. Section 4512, subdivision (b), provides that the determination of which services and supports are necessary for each consumer are to be made through the IPP process,

on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option

5. Section 4512, subdivision (e), defines "natural supports" as "personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships"

6. It was impossible for Sandra G. to give the Service Agency advance notice of the need for additional services on March 18, 2012, in view of Ms. Mendez's physical incapacity only having become known to Sandra G. on Saturday, March 17. Given the absence of natural supports at that time and the excusable unavailability of Sandra G. on March 18 due to her work obligations, as well as the apparent availability of hours set aside for unplanned support needs and the failure of the Service Agency to include in its denial letter the issue of the timeliness of Sandra G.'s request, claimant's appeal is granted. (Factual Findings 3-9.)

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ORDER

The appeal by claimant Hannah G. is granted.

In addition to funding eight hours of care for claimant on March 18, 2012, the Service Agency shall fund the care provided to claimant on that date by Ligia Liques during the five hours that Ms. Mendez was also providing care.

DATED: September 28, 2012

/s/

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.